

1
2
3
4
5
6 Hon. Benjamin H. Settle
7
8

9
10
11
12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT TACOMA
15

16 HP TUNERS, LLC, a Nevada limited
17 liability company,

18 Plaintiff,

19 vs.

20 KEVIN SYKES-BONNETT and SYKED
21 ECU TUNING INCORPORATED, a
22 Washington corporation,

23 Defendants.

24 No. 3:17-cv-05760 BHS

25 DEFENDANTS' OPPOSITION TO
26 PLAINTIFF'S MOTION TO EXTEND
27 EXPERT DISCLOSURE DEADLINES

28 Defendants Kevin Sykes-Bonnett, John Martinson, and Syked ECU Tuning, Inc.
29 (collectively "Syked Tuning") hereby submit this Opposition to the Motion to Extend Expert
30 Disclosure Deadlines (Dkt 53) filed by Plaintiff HP Tuners, LLC ("HP Tuners").
31

32 **I. DISCUSSION AND AUTHORITIES**

33 HP Tuners has belatedly moved this Court for an order extending the expert disclosure
34 deadlines ("the Motion") a mere three court days before the expiration of that deadline. At no
35 point prior to the very day that HP Tuners filed its Motion had it even broached the topic of
36 expert discovery deadlines with Syked Tuning. The Court should deny that motion for at least
37 the following reasons:

38 HP Tuners correctly points out that the parties have been engaged in written discovery
39 for many months. Syked Tuning served its first requests for document production on
40

Opposition to Motion to Extend Expert Disclosure Deadlines

No. 3:17-cv-05760 BHS

-1-

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107

1 December 1, 2017, and HP Tuners served its first requests for document production on
 2 December 27, 2017. The parties agreed that no documents would be produced until after entry
 3 of a stipulated protective order. However, even after this Court entered the stipulated
 4 protective order, HP Tuners was dilatory in its discovery efforts.

5 From time to time, counsel for HP Tuners hinted at the need for both parties to produce
 6 documents but those discussions were largely superficial and HP Tuners made no effort to
 7 shepherd discovery along. Instead, HP Tuners suggested that the parties agree on a date for a mutual, ***simultaneous*** exchange of documents. HP Tuners is correct that Syked Tuning first
 8 produced documents on July 13, 2018 (as did HP Tuners). But HP Tuners omits the fact that it
 9 was HP Tuners, and ***not*** Syked Tuning, that picked (and insisted upon) that date for a
 10 ***simultaneous*** exchange of documents.¹ In other words, the parties first simultaneously
 11 exchanged documents on July 13 because that is the date that ***HP Tuners picked*** to
 12 simultaneously produce documents. HP Tuners should not be heard to delay its own discovery
 13 efforts until late in the discovery period and then blame Syked Tuning for a discovery schedule
 14 that HP Tuners created.

15 HP Tuners also suggests that Syked Tuning has delayed the depositions of Kevin
 16 Sykes-Bonnett and John Martinson. Dkt 53 at ¶ 5-7. What HP Tuners omits is that Syked
 17 Tuning has three times offered HP Tuners dates for those depositions and it is HP Tuners who
 18 has rejected all three of those offered dates. HP Tuners first served its deposition notices on
 19 April 27, 2018 to occur at the end of May. HP Tuners noticed those depositions to occur well
 20 outside the proper distance for depositions and when the witnesses could not appear on
 21 consecutive days. Out of an accommodation to HP Tuners' travel schedule, Syked Tuning
 22 proposed alternative dates when the witnesses could appear on consecutive dates. In one
 23 instance, HP Tuners itself proposed that the depositions occur in July and Syked Tuning
 24 agreed. Only after Syked Tuning agreed to those dates did HP Tuners change its mind and

25
 26
 27 ¹ To be clear, ***neither*** Syked Tuning ***nor*** HP Tuners had produced any documents until July 13, 2018 at HP Tuners' insistence.

1 propose other dates even later. Again, the depositions are currently scheduled for late in
 2 September because that is the date that ***HP Tuners suggested***, not Syked Tuning.
 3

4 In addition, HP Tuners further omits that it has never, before now, indicated any intent
 5 to use expert testimony. At least as early as March 6, 2018 (four months before this Motion),
 6 Syked Tuning stated in its discovery responses that documents pertaining to the Syked Tuning
 7 software would be made available for inspection at HP Tuners' request. HP Tuners has, to this
 8 day, never asked for Syked Tuning to make its software available for inspection by any HP
 9 Tuners expert. HP Tuners' suggestion that its dilatory discovery tactics are because of Syked
 Tuning is simply false.

10 Even more troubling is that HP Tuners is apparently seeking to throw the entire case
 11 schedule on its head. HP Tuners has asked this Court to slip ***only*** the deadlines for disclosure
 12 of expert testimony but no other discovery deadlines. Dkt 53 at ¶ 11. If the Motion were to be
 13 granted, opening expert reports would not be due until well after the close of discovery.
 14 Rebuttal expert reports would not be due until after the deadline for dispositive motions. HP
 15 Tuners' Motion would essentially render expert testimony completely useless. It appears that
 16 HP Tuners seeks to submit an expert report while denying Syked Tuning any opportunity to
 17 take that expert's deposition. Of course, denying Syked Tuning its right of cross examination
 18 would render any expert testimony inadmissible. In addition, HP Tuners' proposed schedule
 19 would deny Syked Tuning the ability to use a rebuttal expert report in its dispositive motions.
 20 In short, HP Tuners' proposed schedule renders expert testimony completely useless without
 21 altering the entire discovery schedule.

22 II. CONCLUSION

23 HP Tuners has no one to blame but itself for its dilatory discovery progress. It was HP
 24 Tuners, and not Syked Tuning, that picked July 13 to exchange documents. And despite Syked
 25 Tuning offering to make documents pertaining to the Syked Tuning software available for
 26 inspection four months ago, HP Tuners has never even asked to allow any expert access to
 27 Opposition to Motion to Extend Expert Disclosure Deadlines

those documents. Finally, HP Tuners' proposed expert disclosure schedule is unworkable without slipping every other deadline remaining in this case, and even jeopardizing the current trial date. For at least all these reasons, HP Tuners' Motion should be denied.

Respectfully submitted,

LANE POWELL PC

DATED: July 25, 2018

By: s/John E. Whitaker

Gregory F. Wesner, WSBA No. 30241
wesnerg@lanepowell.com
John E. Whitaker, WSBA No. 28868
whitakerj@lanepowell.com
LANE POWELL PC
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
Telephone: 206-223-7000
Facsimile: 206-223-7107

Attorneys for Defendants Kevin Sykes-Bonnett,
John Martinson, and Syked ECU Tuning, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I did personally serve the above document on the persons and in the manner indicated below. If the manner of service indicated below is by CM/ECF, the Clerk of the Court will send email notification to such persons.

Attorneys for Plaintiff HP TUNERS, LLC

Stephen G. Leatham, WSBA No. 15572
Heurlin, Potter, Jahn, Leatham, Holtmann &
Stoker, P.S.
211 E. McLoughlin Boulevard, Suite 100
Vancouver, WA 98663
Phone: (360) 750-7547
Facsimile: (360) 750-7548
Email: sgl@hpl-law.com

by CM/ECF
 by Electronic Mail
 by Facsimile Transmission
 by First Class Mail
 by Hand Delivery
 by Overnight Delivery

Attorneys for Plaintiff HP TUNERS, LLC

Andrew P. Bleiman (*pro hac vice* admitted)
Marks & Klein
1363 Shermer Road, Suite 318
Northbrook, IL 60062
Phone: (312) 206-5162
Email: andrew@marksklein.com

by CM/ECF
 by Electronic Mail
 by Facsimile Transmission
 by First Class Mail
 by Hand Delivery
 by Overnight Delivery

Executed on July 25, 2018 at Seattle, Washington.

LANE POWELL PC

Bys/Kathi Milner
Kathi Milner, legal assistant